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HIGH COURT OF CHHATTISGARH AT BILASPUR

M. A. NO. 900 OF 2004

APPELLANT : Oriental Insurance Co. Ltd.
INSURANCE Through its Divisional Manager.

Versus

RESPONDENT : Hemant Kumar Kousik
CLAIMANT/INSURED

POST FOR JUDGMENT ON 17 APRIL 2007

Sd/-
Dhirendra Mishra
Judge
16-04-2007

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APPELLANT INSURANCE : Oriental Insurance Co. Ltd. Through its Divisional Manager, Divisional Office, Malviy Nagar Durg Dist Durg (C.G.)

Versus

RESPONDENT CLAIMANT/INSURED : Hemant Kumar Kousik S/o S.R. Kousik Aged 27 years R/o Qr.No. G-I, I.T.I. Colony Chhawani Bhilai, Distt - Durg, C.G.

Present:

Shri Abhishek Sinha with Shri Ghanshyam Patel, counsel for the appellant/Insurance Company.
Shri P.P. Sahu, counsel for the respondent/Insured.

J U D G M E N T
(Delivered on 19/04/2007)

Dhirendra Mishra, J

The appellant/Insurance Company has preferred this appeal under Section 173 of the Motor Vehicles Act, 1988 (hereinafter referred to as 'the Act of 1988') against the award dated 31st March 2004 passed in Claim Case No. 9/03 by 8th Additional Motor Accident Claims Tribunal (FTC), Durg (C.G.) whereby an award of Rs. 14,888/- has been passed in favour of the respondent/insured for injuries sustained by him.

2. Undisputed facts of the case are that respondent is the registered owner of the motorcycle bearing No. C.G. 07/A-2975 which was insured by the appellant/Insurance Company vide police No. 2002/1405 for a period commencing from 10.5.2001 to 9.5.2002. The respondent/insured moved an application for compensation under Section 166 of the Act of 1988 averring therein that on 4.8.2001 while he was sitting as a pillion rider on his motorcycle which was being driven by deceased Laxminarayan Kurre, an

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unknown truck being driven rashly and negligently and coming from opposite direction, hit his motorcycle as also another Hero Honda motorcycle, as a result of which drivers of both the motorcycles were crushed and died on the spot and respondent/insured sustained grievous injuries. Offence under Sections 304-A, 279, 337 was registered against the driver of the unknown truck by Police Station – Bhilai-3 and with these pleadings a claim petition claiming compensation of Rs.6,20,000/- was filed, which was contested by the appellant/Insurance Company and a preliminary objection was raised that the said application at the instance of the respondent/insured was not maintainable as he is the first party and application not being at the instance of third party, is not maintainable.

3. I have heard learned counsel for the respective parties and perused the material available on record.

4. Learned Tribunal by the impugned award while deciding issue No. 4 "whether the suit is not maintainable as the applicant (respondent herein) himself is owner of the motorcycle and insured" held the suit maintainable. The only issue that is to be decided by this Court is as to whether the claim petition preferred by the respondent/insured under Section 166 of the Act of 1988 for compensation towards damages to injuries sustained by him, is maintainable or not.

5. Learned Tribunal has decided the above issue in favour of the claimant by referring to the conditions of the insurance policy contained in the document of Ex.P/16 where under the head "SECTION –II LIABILITY TO THIRD PARTIES" it has been mentioned thus:

> "1. Subject to the limites liability as laid down in the schedule here to the company will indemnify the insured in the event of accident caused by or arising out of the use of Motor Cycle against all sums which the Insured shall become legally liable to pay in respect of

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(i) death or bodily injury to any person including person conveyed on the Motor Cycle provided such person in not carried for hire or reward,

(ii) damage to property other then property belonging to the insured or held in trust by or in the custody or control of the insured or any member of the insured's house hold being conveyed by the Motor Cycle.

6. Learned Tribunal interpreting the above stipulation has observed that the motorcycle was comprehensively insured for two persons and at the time of accident Laxminarayan was driving the motorcycle whereas the respondent/insured was sitting as a pillion rider, in such circumstances, how it can by inferred that in case in the accident where the owner was sitting in the motorcycle, he is not entitled to receive compensation as the policy nowhere mentions that where two persons for whom the vehicle is insured, are riding on a motorcycle and one of them is owner of the motorcycle, in that case the owner shall not be entitled to receive compensation particularly when the owner has paid premium.

7. From bare reading of the policy conditions reproduced hereinabove, it is manifestly clear that the insurer has indemnified the insured against all sums which the insured shall become legally liable to pay in respect of bodily injury to any person including a person conveyed on the motorcycle and also towards the damages to property other then the property belonging to the insured or held in trust etc. by him and conveyed by the motorcycle. The finding of the Tribunal that the policy nowhere mentions that if owner of the vehicle is traveling in the motorcycle and sustains losses, he will not be entitled for compensation, is based on misreading of the conditions of the policy.

8. To appreciate the rival submissions advanced by the parties, it would be appropriate to refer to the relevant part of Sections 165, 166 of the Act of 1988 which reads as under;

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"165. Claims Tribunals.- (1) A State Government may, by notification in the Official Gazette, constitute one or more Motor Accidents Claims Tribunals (hereinafter in this Chapter referred to as Claims Tribunal) for such area as may be specified in the notification for the purpose of adjudicating upon claims for compensation in respect of accidents involving the death of or bodily injury to, persons arising out of the use of motor vehicles, or damages to any property of a third party so arising, or both."

"166. Application for compensation.-
(1) An application for compensation arising out of an accident of the nature specified in sub-section (1) of Section 165 may be made
(a) by the person who has sustained the injury; or
(b) by the owner of the property; or
(c) where death has resulted from the accident, by all or any of the legal representatives of the deceased; or
(d) by any agent duly authorized by the person injured or all or any of the legal representatives of the deceased, as the case may be."

9. Thus, from the conjoint reading of Sections 165 & 166 of the Act of 1988 it is manifestly clear that only third party can prefer claims for compensation in respect of accidents involving the death of or bodily injury to, person arising out of use of motor vehicle or damages to any property.

10. In the matter of **Dhanraj Versus New India Assurance Co. Ltd. and another**, reported in **(2004) 8 SCC 553,** the Supreme Court while considering the question whether comprehensive policy would cover the risk of injury to owner of the vehicle also and interpreting Section 147 of the Act of 1988 i.e. requirements of policies and limits of liability, has held in paragraph – 8 as under;

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> "8. Thus, an insurance policy covers the liability incurred by the insured in respect of death of or bodily injury to any person (including an owner of the goods or his authorized representative) carried in the vehicle or damage to any property of a third party caused by or arising out of the use of the motor vehicle. Section 147 does not require an insurance company to assume risk for death or bodily injury to the owner of the vehicle."

11. In the matter of **Smt. Urmila Bai and others Vs. Police Issuing Officer, Branch Manager, The Oriental Insurance Company**, the Division Bench of this High Court while dealing with the question as to entitlement of legal representatives of the deceased/owner of the motorcycle involved in the accident, to claim compensation, has held in paragraph – 7 as under;

> (7) We are of the considered view that since the deceased was owner of the vehicle, so far as third party risk is concerned, his legal representatives are not entitled to claim compensation in accordance with the provisions of the Act, 1988, so far as insurance towards personal injuries upto the extent of Rs. 1,00,000/- is concerned, the said claim has already been satisfied by the respondent/Insurance Company."

12. In the matter of **Oriental Insurance Co. Ltd. Vs. Pooranlal & Anr.** reported in **AIR 2006 Chhattisgarh 77** also this Court considering the maintainability of the application under Section 166 of the Act of 1988, at the instance of owner/insured has observed that only a third party can prefer claims for compensation in respect of accidents involving death of or bodily injury to person arising out of use of motor vehicle or damages to any property and application preferred by the insured owner of the vehicle is not maintainable as

he is not the third party and thus the claim petition at his instance cannot be maintained.

13. On the basis of aforesaid discussion, I am in agreement with the view taken in the above cited judgments. Accordingly, the application under Section 166 of the Act of 1988 at the instance of the respondent/insured who was owner of the motorcycle and insured, is held to be not maintainable, the instant appeal is allowed and award impugned is set aside.

14. It is made clear that the respondent/claimant shall be at liberty to initiate appropriate proceedings available under the law for recovery of the compensation towards injuries sustained by him, in accordance with the conditions of the Insurance Policy and this judgment shall not come in his way. There shall be no order as to costs.

Sd/-
Dhirendra Mishra
Judge